

The meeting of the Cape Cod Commission was called to order on Thursday, January 22, 2009 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ EXECUTIVE DIRECTOR'S REPORT

Executive Director Paul Niedzwiecki introduced Michael Savarese as the new GIS Analyst and Anne Reynolds as the new GIS Program Manager at the Commission. He said he attended a meeting about the Commission's budget and said it went well. He discussed the stimulus program and said a letter listing potential regional projects on the Cape was submitted to the Governor. He said he would make the list available to everyone once the Commission hears from the Governor.

Florence Seldin inquired about submittals from towns.

Mr. Niedzwiecki said it happened so quickly and he is not sure how many towns submitted letters. He said perhaps there would be another round that towns could respond to. He said the Commission spoke to towns about projects the Commission was submitting to the Governor that would have regional impacts.

Chair John Harris presented Bill Doherty with a certificate acknowledging his service as the County Commissioner's representative to the Commission. He expressed his gratitude to Mr. Doherty for his service and said he would be missed.

Bill Doherty said his replacement, Sheila Lyons, sought the opportunity to be the County Commissioner's representative to the Commission. Mr. Doherty said he has learned a great deal from the experience and he has received as much as he has given. He expressed his appreciation to Commission members and staff.

Brad Crowell said both he and Mr. Doherty joined the Commission about the same time. He said Mr. Doherty was always in attendance at many different meetings and he has set a standard for all Commission members. He expressed his appreciation to Mr. Doherty and said he will be missed.

■ MINUTES

The minutes of the November 10, 2008 Commission member retreat were reviewed. Roger Putnam moved to approve the minutes. Florence Seldin seconded the motion. The motion passed with two abstentions.

The minutes of the December 4, 2008 Commission meeting were reviewed. Joy Brookshire moved to approve the minutes. Brad Crowell seconded the motion. The motion passed with three abstentions.

Chief Regulatory Officer Kristy Senatori said the representative for the Excel Switching Corp Corporate Facilities project was running late and requested that the order of agenda items be switched to accommodate his late arrival.

Chair John Harris agreed and said the Centerville Public Library project would be heard first.

■ CENTERVILLE PUBLIC LIBRARY

Chair John Harris noted that this is a continued hearing from December 10, 2008.

The subcommittee reviewed the minutes of the January 8, 2009 subcommittee meeting. Roy Richardson moved to approve the minutes. Roger Putnam seconded the motion. The minutes were unanimously approved.

Kristy Senatori said the Centerville Public Library submitted a Hardship Exemption application for the permitting and construction of 14 paved parking spaces to proceed during the Craigville Beach District of Critical Planning Concern (DCPC) limited moratorium. She said the site consists of 1.14 acres of land at 585 Main Street in

Centerville and the Centerville Public Library, which was constructed in 1956, occupies the site. She said although the library is an independent not-for-profit charitable, educational organization, the library may be considered a quasi-municipal entity. She said much of their budget is funded by the Town of Barnstable, the library's financial results are incorporated into the town's financial statements, and the library provides public library services to the town. She said the library is proposing to construct 14 parking spaces on an existing disturbed area of the site between the library building and Main Street and the construction of these 14 parking spaces does not independently exceed any of the DRI thresholds. Ms. Senatori said presently there are seven parallel parking spaces in this area, as well as a graveled area that is also used for parking. She said there is a large European Beech tree located on the library's property along Main Street and the applicant designed the proposed parking area to preserve the tree. She said the applicant had the proposed parking expansion plans prepared on January 24, 2008 which was prior to the Commission receiving the nomination for the Craigville Beach and Centerville Village Center DCPC on February 12, 2008. She said the library is located within the Centerville Village District DCPC and said the area is subject to a building permit moratorium which allows the town to develop implementing regulations that will preserve the resources protected by the Cape Cod Commission Act. She said the DCPC decision has a provision that allows an applicant to apply for a hardship exemption for any development that can demonstrate that suspension of action on a development permit during the limited moratorium constitutes a substantial hardship. She said the applicant states the parking spaces are critically needed to serve the existing library demand and estimates that on average 850 people visited the library per day over the past summer and the number of patrons visiting the library each day has increased. Ms. Senatori said with the permitting efforts and expenses already incurred, the applicant has indicated that having to wait until after the DCPC regulations are drafted in June 2009 results in a significant hardship to the library and its patrons. She explained the subcommittee's findings and conditions in the draft decision regarding natural resources and community character and said the subcommittee found that the applicant has demonstrated that the DCPC limited moratorium on the issuance of local permits creates a hardship, the applicant had expended funds and prepared project plans prior to the implementation of the DCPC limited moratorium, and there is a significant need for additional parking spaces. She said the construction of internal pedestrian walkways would improve safe vehicular and pedestrian circulation within the property site. She said the subcommittee has determined that the proposed project is consistent with Barnstable's Local Comprehensive Plan and municipal bylaws, the probable benefits outweigh the probable detriments and recommends approval of the Hardship Exemption application of the Centerville Public Library for the proposed paved parking spaces.

Leo Cakounes said because the site is located within a historic district would the project require a permit from the historic commission before it can go forward.

Kristy Senatori said the Massachusetts Historic Commission has commented and they believe the project does not impact the historic character in the area.

Eliza Cox, of Nutter McClennen & Fish representing the applicant, thanked Ms. Senatori for her overview of the project. She said the parking spaces are desperately needed for the library. She said a lot of families come to the library and right now there are no walkways. She said the project would provide internal pedestrian walkways that would improve safety on the site. She said there has been wide community support of the library. She said the library is proposing a landscape plan that preserves the beech tree adjacent to the parking area and defines the edge of the streetscape and separates it from the parking area. She said the applicant has received many sponsors for the landscaping of the area. She thanked Commission staff and the subcommittee for their efforts.

Peter Graham referred to the landscape plan and asked if the plan was the final plan.

Eliza Cox said it is not the final plan. She said it's slightly different but it's an overall concept of the plan.

Peter Graham asked if Mr. Monahan, a neighbor, had seen the landscape plan.

Eliza Cox said, yes, Mr. Monahan has seen it and he approves the landscape plan.

Jay Zavala asked if the town considers the library a quasi government entity.

Kristy Senatori said, yes, the town does consider it to be.

Eliza Cox said much of the funds come from the town even though it's a private non-profit entity.

Jo Anne Miller Buntich, Director of Growth Management for the Town of Barnstable, said the town does consider the library to be a quasi-municipal entity and said the library is partially funded by the town as Ms. Cox has stated. She said the town supports the configuration of the parking spaces, the landscaping plan and preservation of the beech tree. She referred comments about headlights disturbing a neighbor, Mr. Monahan, and said the landscaping would take care of that to a degree and noted that some of the headlights are not from the library.

Roy Richardson moved to close the hearing and the record. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

Roy Richardson moved to approve with conditions the Hardship Exemption application of the Centerville Public Library for the proposed 14 paved parking spaces. Peter Graham seconded the motion.

Leo Cakounes asked why condition the hardship for seven years when the DCPC would be over in a few months.

Kristy Senatori said that is standard language in the Commission's decisions.

A vote called on the motion passed with a unanimous vote.

■ EXCEL SWITCHING CORP CORPORATE FACILITIES—PERSEVERANCE LLC

Roy Richardson recused himself from the hearing.

Chair John Harris noted that this is a continued hearing from November 19, 2008.

The subcommittee reviewed the minutes of the January 14, 2009 subcommittee meeting. Florence Seldin moved to approve the minutes. Roger Putnam seconded the motion. The motion passed with one abstention.

Chief Regulatory Officer Kristy Senatori said the applicant, Stuart Bornstein of Perseverance LLC has applied for a Hardship Exemption. She referred to PowerPoint slides showing an aerial photograph of the site and surrounding area. She said the project site is situated on Perseverance Way and Gonsalves Avenue in Hyannis, MA and consists of approximately 8.76 acres. She said the site owned by Perseverance, LLC since January 2002 is situated within the Excel Switching Corp Corporate Campus which totals 19.59 acres of land and is comprised of three existing office buildings at 45-75, 60 and 70 Perseverance Way. She said the applicant proposes to construct two approximately 32,000 square foot, two-story office buildings as well as 84 additional parking spaces, rain gardens, and landscaping. Ms. Senatori provided a procedural history and said a DRI decision was rendered in December 1997 whereby a 46,000 square foot building known as the Auburn Wire building was approved and is part of the campus. She said there was also a DRI decision in June 1998 that approved construction of 99,000 square feet of gross floor area in two buildings—one approximately 57,000 square foot building was constructed and is part of the campus as it exists today and one approximately 42,000 square foot building was approved but was not constructed and the DRI expired in 2005. She said mitigation previously provided open space, \$1,500 toward a flushing study, and \$27,000 in transportation mitigation. She said the mitigation was for the 56,000 square foot building that was constructed and a portion of the mitigation required

for the 42,000 square foot building that was never built. Ms. Senatori highlighted the key findings and conditions in the draft decision regarding community character, open space, water resources and transportation. She said the subcommittee found that the applicant has demonstrated that a hardship exists and allowed for a partial reduction in mitigation based on the fact that the applicant already provided transportation mitigation from the previous DRI. She said there is a condition in the draft decision whereby the applicant shall pay half of the required transportation mitigation when the first building is constructed and other half when the second building is constructed. She said one of the benefits of the project is the “green” building design components including a highly efficient HVAC system, infrastructure for plug-in electric vehicles, incorporating renewable energy systems, a solar thermal system, and harvesting rainwater for irrigation among other “green” design features. She said at the January 14, 2009 meeting the subcommittee unanimously approved the Hardship Exemption application with conditions of Perseverance, LLC for the proposed development at Perseverance Way and Gonsalves Avenue in Hyannis and recommends approval by the full Commission.

Leo Cakounes asked for clarification on traffic mitigation paid in 1998 and inquired about the 8.95 acres of open space donated through a conservation restriction and asked how that was calculated in.

Kristy Senatori said the DRI expired in 2005. She said the applicant paid \$56,000 in mitigation and has asked for relief because of mitigation paid previously on a building that was never built. She said it was calculated under the 1996 RPP.

Attorney Michael Princi, with the law firm of Wynn & Wynn representing the applicant, said Ms. Senatori covered all the points. He said the original DRI campus was envisioned at 250,000 square feet. He said the present proposal is well below the original square feet. He said Glenn Cannon calculated transportation mitigation based on the current RPP and calculated mitigation on 40,000 square feet based on the 1998 RPP and from that they received a credit. Attorney Princi said he asked the subcommittee to accept the figure of \$125,000. He said the applicant has been asked to construct internal crosswalks and said Mr. Bornstein is putting in substantial money to accommodate the Commission’s recommendations.

Jo Anne Miller Buntich, Director of Growth Management for the Town of Barnstable, said the town has worked with the applicant and Commission staff and the town is comfortable with the Commission’s decision as written.

Attorney Princi said staff met with Dan Ojala of Down Cape Engineering to discuss safety issues. He said they didn’t agree with the subcommittee but they went along with the subcommittee. He said they are content with the subcommittee’s vote and he said a number of changes were made to address safety issues.

Glenn Cannon, transportation engineer at the Commission, referred to discussion about the ramp and said it does not pertain to the RPP and was not a concern for RPP approval. He said it’s a concern of the Fire Department. Mr. Cannon said he is comfortable with the way the decision is written.

Peter Graham referred to page 8 of the draft decision where Chief Crosby indicates that the town has an issue with the distance between the two signals and asked if that issue had been resolved with the Fire Department.

Rick Pfautz, Deputy Chief/Barnstable Fire Department, said he cannot say that Chief Crosby’s concerns have been satisfied. He said he has concerns that a light is needed and said he would be raising those issues at Site Plan Review. He said the concern still exists and said it has not been addressed.

Glenn Cannon said this would be raised for review of Cape Cod Healthcare.

Leo Cakounes referred to his original concern about how payment was calculated. He asked if there were any additional requirements for open space.

Kristy Senatori reviewed the issues and said there were two open space requirements previously in 1999. Heather McElroy, natural resources specialist at the Commission, said there are no open space requirements with this project.

Leo Cakounes inquired about Building #15 and said instead of a ramp connecting parking lots perhaps another means of access should be considered.

Jay Zavala called for a point of order and said that is not part of the Commission's review. He said the applicant should take that up with the town.

Florence Seldin said the applicant has to go through Site Plan Review and the subcommittee does not have purview to Site Plan Review.

Jo Anne Miller Buntich explained the Site Plan Review process by the town.

Joy Brookshire asked who are the future tenants of the two buildings.

Attorney Princi said the southerly building would be built first. He said the applicant has two Requests for Proposals (RFPs) with local agencies. He said he is hoping for one County agency and one State agency.

Joy Brookshire referred to Concept Elevations Sheet C17 and asked why the alternate plan.

Kristy Senatori said the subcommittee looked at several designs and felt community character complies with the guidelines.

Brad Crowell said as a member of the subcommittee, they looked at that and noted that community character is important to him. He said the subcommittee looked at BJs and in that context it would be difficult to get a Cape Cod look in that area. He said they tried to make it look as good as it can and said it's not in the context of the area to make it look differently.

Florence Seldin said the subcommittee looked at a number of designs. She said they looked at height and frontage and decided on the one in the draft decision.

Elizabeth Taylor said if a County agency goes in would there be bus stops and transportation for County employees.

Attorney Princi said public transportation does stop in that area. He said he believes there is a bus stop inside the complex.

Glenn Cannon said he believes the bus stop is across the street in the Festival Mall. He said people would have to cross the street. He said currently there are no bus stops there. He said the applicant would have to make a request to the Regional Transit Authority (RTA) to have a bus stop in the complex.

Brad Crowell referred to Ms. Taylor's comment and asked Mr. Cannon if the design would accommodate future public transportation in the area.

Glenn Cannon said, yes, the applicant would have to make special arrangements and said it's the applicant's responsibility to take that up with the RTA.

Florence Seldin moved to close the hearing and the record. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

Florence Seldin moved to approve the Hardship Exemption application of Perseverance LLC for two proposed office buildings on the Excel Switching Corp Corporate Campus. Brad Crowell seconded the motion. The motion passed with a unanimous vote.

■ PROPOSED TECHNICAL BULLETIN 09-001, DRI GUIDELINES FOR MITIGATION CREDIT AND REDUCTION FOR MPS AH 3.2

Chair John Harris noted that this is a continued hearing from January 8, 2009.

Chief Planner Sharon Rooney said the new RPP went into effect on Friday, January 16, 2009. She said there are many technical bulletins to be created just as the one that is before the Commission today. She said technical bulletins don't change policy and said they are used as guidance documents. She said regarding the Commission providing adequate notice and review time, a hearing notice was sent out and the technical bulletin has been on the Commission's website. She said the Commission is committed to revising one section of the RPP each year so staff and the Planning Committee can go back and take a look at this technical bulletin again. She said staff is asking the Commission to approve the technical bulletin as amended.

Paul Ruchinskas described the language changes that have been made in the technical bulletin and said fundamentally the information that is being requested from applicants is unchanged from the public hearing held on January 8, 2009.

Leo Cakounes asked for clarification and said if an employer is required to pay higher wages to employees, then they would pay less for affordable housing mitigation.

Paul Ruchinskas said, yes, that is correct.

Leo Cakounes said he likes the document but he doesn't agree with it.

Florence Seldin said that was discussed in detail during the RPP process. She said affordable housing is an area the Commission will continue to look at.

Jay Zavala thanked Mr. Ruchinskas and said the document is well written. He said he would suggest that in the background section of the document there be some reference to the Commission's 2008 RPP. He said that should be shown somewhere and said he would offer his edits in that regard.

Elizabeth Taylor asked if average wages are being considered based on full-time jobs or part-time jobs.

Paul Ruchinskas said average wages come from what's reported to the state and includes all full-time, part-time and seasonal jobs.

John Harris asked if the information submitted by the applicant is required or optional.

Paul Ruchinskas said it's required if they want to take the option.

John Harris questioned whether "shall" should be used in the document as opposed to "should."

Paul Ruchinskas said in the Commission's technical bulletins "should" is used not "shall."

Sharon Rooney said the Commission has used “should” in all technical bulletins to provide some flexibility because the document is used as a guidance document.

Roger Putnam said the technical bulletin is not policy and since it’s a guidance document “should” is appropriate.

Florence Seldin moved to close the hearing and the record. Sheila Lyons seconded the motion. The motion passed with a unanimous vote.

Florence Seldin moved to approve Technical Bulletin 09-001, Development of Regional Impact Guidelines for Mitigation Credit and Reduction for Minimum Performance Standard AH3.2 as revised. Joy Brookshire seconded the motion. The motion passed with a unanimous vote.

■ OTHER BUSINESS

Paul Niedzwiecki said today is Leo Cakounes’ last day. He said thanked Mr. Cakounes for serving as the Harwich Representative to the Commission. He said he is sorry to see him go and he will be missed.

Mr. Niedzwiecki congratulated Florence Seldin and said she has been elected to serve on the Chatham Board of Selectmen. He thanked Ms. Seldin for serving as the Chatham Representative to the Commission and said she will be missed.

Jay Zavala complimented Nancy Hossfeld, communications coordinator at the Commission, for her fine work on the Commission’s website. He thanked Mr. Niedzwiecki and the Cape Cod Chamber of Commerce for conducting the recent symposium on tourism. He said he attended the symposium and enjoyed it very much.

Mr. Zavala referred to the Excel Switching presentation that was given earlier today and suggested that perhaps when Commission staff make their presentations to the full Commission that the subcommittee’s recommendation be presented after public comment.

Roger Putnam said a subcommittee’s recommendations are made known in hearing and meeting minutes that are distributed to Commission members. He said there is no way that their recommendations wouldn’t appear in the minutes therefore the subcommittee’s recommendations are already known.

Jessica Wielgus said when a project is being presented to the full Commission the regulatory officer presents the conclusions made by the subcommittee for the Commission’s consideration.

Joy Brookshire said findings are made up front and they are also reiterated again in subcommittee findings at the conclusion of the presentation.

Florence Seldin said a subcommittee votes on findings and conditions in a decision for the full Commission’s consideration.

A motion was made to adjourn at 4:50 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Florence Seldin, Secretary